

Eric Croft (Alaska Bar No. 9406031)
THE CROFT LAW OFFICE
738 H Street
Anchorage, AK 99501
T: 907-272-3508 | F: 907-274-0146
eric@croftlawoffice.com

Peter C. Renn (*pro hac vice* application forthcoming)
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
4221 Wilshire Boulevard, Ste. 280
Los Angeles, CA 90010
T: 213-382-7600 | F: 213-351-6050
prenn@lambdalegal.org

Tara L. Borelli (*pro hac vice* application forthcoming)
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
730 Peachtree St. NE, Ste. 640
Atlanta, GA 30308
T: 470-225-5341 | F: 404-897-1884
tborelli@lambdalegal.org

Attorneys for Plaintiff Jennifer Fletcher

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

JENNIFER FLETCHER,

Plaintiff,

v.

THE STATE OF ALASKA,

Defendant.

Case No. 1:18-cv-00007-HRH

**COMPLAINT FOR DECLARATORY RELIEF AND DAMAGES
UNDER TITLE VII (42 U.S.C. § 2000e, et seq.)**

COMPLAINT FOR DECLARATORY RELIEF AND

DAMAGES UNDER TITLE VII (42 U.S.C. § 2000e, et seq.)

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INTRODUCTION

1. Plaintiff Jennifer Fletcher (“Ms. Fletcher”) is a State of Alaska legislative librarian. She has been denied coverage for medically necessary transition-related care because she is transgender, in violation of the prohibition against discrimination based on sex in Title VII, 42 U.S.C. § 2000e, *et seq.*

2. As part of compensation for employment, Defendant State of Alaska provides its employees with health care coverage through a self-funded plan, the AlaskaCare Employee Health Plan (“AlaskaCare”).

3. AlaskaCare singles out transgender employees for unequal treatment by categorically depriving them of coverage for surgical treatment for gender dysphoria, which is the clinically significant distress that can result from the dissonance between one’s gender identity and sex assigned at birth. This exclusion contravenes a well-established medical consensus that such surgical treatment can be medically necessary and even life-saving. Other State of Alaska employees who are not transgender do not face blanket exclusions barring coverage for health care that is medically necessary for them.

4. Because of the State of Alaska’s blanket exclusion, Ms. Fletcher has been forced to incur thousands of dollars in out-of-pocket costs to obtain medically necessary transition-related care without the financial protection afforded by AlaskaCare coverage. She has also suffered emotional distress, humiliation, and a loss of dignity because of the State of Alaska’s targeted discrimination against transgender employees, which wrongly deems their health care needs as “unnecessary.”

5. Ms. Fletcher brings this action to challenge the State of Alaska’s blanket exclusion of medically necessary transition-related surgical care and to obtain a judgment declaring it unlawful, thereby preventing its enforcement.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 42 U.S.C. § 2000e-5(f)(3), and 28 U.S.C. §§ 1331, 1343, and 2201.

7. Venue is proper in this Court under 42 U.S.C. § 2000e-5(f)(3), 28 U.S.C. § 81A, Local Rule 3.3, and 28 U.S.C. § 1391(b), because both Plaintiff and Defendant reside within the District of Alaska, and a substantial part of the events that gave rise to Plaintiff's claims took place within Juneau, where Plaintiff resides and where she was subjected to the unlawful employment practices alleged herein.

8. This Court has personal jurisdiction over Defendant because Defendant is domiciled in the State of Alaska.

PARTIES

9. Ms. Fletcher is a 36-year-old woman who is transgender. Ms. Fletcher is employed as a legislative librarian by the State of Alaska and resides in Juneau, Alaska.

10. Defendant State of Alaska ("State of Alaska" or "State") is an employer within the meaning of Title VII and provides health care coverage to its employees through AlaskaCare.

FACTUAL ALLEGATIONS

Sex, Gender Identity, and Gender Dysphoria

11. Gender identity is a well-established concept, referring to an individual's fundamental, internal sense of being a particular gender. It is an essential element of human identity that everyone possesses. Gender identity is innate, has biological underpinnings, and is fixed at an early age.

12. An individual's sex is generally assigned solely on the basis of external genitalia at the time of birth. Other sex-related characteristics such as chromosomes, hormone levels,

internal reproductive organs, secondary sex characteristics, and gender identity, are typically not assessed or considered during the assignment of sex at birth.

13. Most people possess a gender identity that matches their sex assigned at birth and other sexual characteristics. This is not the case for transgender people, who are defined as transgender because their gender identity does not align with the sex they were assigned at birth.

14. Where an individual's gender identity does not match that individual's sex assigned at birth, gender identity is the critical determinant of sex. External genitalia are but one of several sex-related characteristics and are not always indicative of a person's sex. A scientific consensus recognizes that attempts to change an individual's gender identity to bring it into alignment with the sex assigned at birth are ineffective and harmful.

15. The dissonance between an individual's gender identity and the sex they were assigned at birth can be associated with clinically significant distress, which is known as gender dysphoria. Gender dysphoria is a medical condition recognized in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, and by other leading medical and mental health professional groups, including the American Medical Association ("AMA") and the American Psychological Association ("APA").

16. In addition to clinically significant distress, gender dysphoria can also result in severe anxiety, depression, and suicidal ideation or suicide without adequate treatment.

17. Untreated gender dysphoria also often intensifies with time. The longer an individual goes without adequate treatment, the greater the risk of severe harms to the individual's health.

18. Gender dysphoria can be treated in accordance with internationally recognized Standards of Care formulated by the World Professional Association for Transgender Health

(“WPATH”). These Standards of Care are recognized as authoritative by national medical and behavioral health organizations such as the AMA and APA, which have called for an end to exclusions of transition-related care from health insurance plans.

19. The ability to live in a manner consistent with one’s gender identity is critical to the health and wellbeing of transgender individuals and is a key aspect in the treatment of gender dysphoria. The process by which transgender individuals come to live in a manner consistent with their gender identity, rather than the sex they were assigned at birth, is known as transition.

20. The steps that transgender individuals take to transition are not identical but typically include social, legal, and medical transition.

21. Social transition entails a transgender individual living in accordance with their gender identity in all aspects of life. For example, for a man who is transgender (assigned female at birth), social transition can include wearing typically male attire, using male pronouns, and otherwise living as a man in all aspects of everyday life.

22. Legal transition involves steps to formally align a transgender individual’s legal identity with their gender identity, such as legally changing one’s name and updating the name and gender marker on their driver’s license, birth certificate, and other forms of identification.

23. Medical transition, a critical part of transitioning for many transgender individuals, includes treatments that bring a transgender individual’s body into alignment with their gender identity, such as hormone replacement therapy or surgical care. Whether any particular treatment is medically necessary or even appropriate, however, depends on the needs of the individual.

24. Hormone replacement therapy involves taking hormones for the purpose of bringing one’s secondary sex characteristics into typical alignment with one’s gender identity.

Secondary sex characteristics are bodily features not associated with external and internal reproductive genitalia (primary sex characteristics). Secondary sex characteristics include, for example, hair growth patterns, body fat distribution, and muscle mass development. These secondary features play a role in communicating an individual's gender. Hormone replacement therapy can have significant masculinizing or feminizing effects and can assist in bringing a transgender individual's body into alignment with their true sex, as determined by their gender identity.

25. Transition-related surgical care or treatment—also known as gender confirmation surgery or sometimes called “sex reassignment” surgery—refers to any surgical procedure undergone by a transgender individual to better align their primary or secondary sex characteristics with their gender identity. Such surgical care can include but is not limited to vaginoplasty, phalloplasty, mammoplasty, and mastectomy.

26. Surgical care can be medically necessary to treat gender dysphoria.

27. An established body of medical research demonstrates the effectiveness and medical necessity of gender dysphoria treatment, including mental health care, hormone therapy, and surgical treatment. Health care experts have recognized that such treatments are not “cosmetic,” “elective,” or “experimental.” Rather, they are safe, effective, and medically necessary treatments for a serious health condition.

28. For example, WPATH has explained that “[t]he medical procedures attendant to gender affirming/confirming surgeries are not ‘cosmetic’ or ‘elective’ or ‘for the mere convenience of the patient.’ These reconstructive procedures are not optional in any meaningful sense, but are understood to be medically necessary for the treatment of the diagnosed condition. In some cases, such surgery is the only effective treatment for the condition, and for some people

genital surgery is essential and life-saving.”

29. Similarly, in 2014, the federal Department of Health and Human Services Departmental Appeals Board confirmed that surgical treatment is safe and effective treatment for gender dysphoria. After reviewing expert medical testimony and published studies, the Appeals Board concluded that the Medicare program’s then-existing exclusion of such treatment from coverage was “not reasonable.”

30. These various components associated with transition—social, legal, and medical transition—do not change an individual’s gender, as that is already established by gender identity, but instead bring the individual’s social presentation, legal identity, and sex-related characteristics into greater typical alignment with their gender identity and lived experience.

The State’s Targeted and Discriminatory Exclusion of Transition-Related Care

31. At all relevant times, AlaskaCare has contained a blanket exclusion of transition-related surgical treatment. For example, in both the 2017 and 2018 plans, the Medical Benefit Exclusions section denies coverage for “[a]ny treatment, drug, service or supply related to changing sex or sexual characteristics, including: [s]urgical procedures to alter the appearance or function of the body.”

32. Because the only people who require medically necessary care to treat gender dysphoria are transgender, denying coverage for such health care necessarily discriminates against transgender people. As a result of the blanket exclusion in the AlaskaCare plan, non-transgender people receive coverage for their medically necessary health care, but transgender people do not.

33. The State’s blanket exclusion of state employee health coverage for transition-related care has existed in the plan since at least 1979 if not earlier, when understanding of

transgender people was far more limited. Today, however, the medical consensus recognizes that discriminatory exclusions of transition-related care have no basis in medical science.

34. The overwhelming majority of states and other public and private employers do not have blanket exclusions of employee health coverage for transition-related care. Indeed, several states expressly outlaw such health care exclusions, including through insurance laws, regulations, and/or bulletins.

35. Until recently, AlaskaCare contained an even broader blanket exclusion of transition-related care, which was not limited to surgical treatment but also expressly denied coverage for hormone therapy and counseling. In the 2018 plan, the State of Alaska removed its earlier exclusion of coverage for transition-related hormone therapy and counseling in AlaskaCare.

36. The State of Alaska removed its exclusion of transition-related hormone therapy and counseling in AlaskaCare because it recognized that such care can constitute medically necessary treatment for gender dysphoria. The 2018 plan states that it “covers only those services and supplies that are medically necessary.”

37. Although the State of Alaska currently provides coverage for transition-related hormone therapy and counseling in AlaskaCare because they can constitute medically necessary treatment for gender dysphoria, the State of Alaska does not provide coverage for transition-rated surgical treatment in AlaskaCare, despite the fact that it too can constitute medically necessary treatment for gender dysphoria.

38. The State of Alaska previously engaged a consulting firm to determine the potential fiscal impact of covering treatment for gender dysphoria, including surgical care, in AlaskaCare.

39. The consulting firm's analysis, which was detailed in a September 2016 memorandum, informed the State of Alaska that transition-related surgical treatment can be medically necessary for gender dysphoria. The memorandum explained that "[g]enerally, there are three services/procedures commonly most crucial to address gender dysphoria and produce optimal outcomes for the individual - psychotherapy, HRT [i.e., hormone replacement therapy] and gender reassignment surgery. These treatments are usually regarded as 'medically necessary.'" The memorandum noted that transition-related "treatments often include both [hormone] therapies and surgical procedures."

40. The memorandum also explained that major insurance carriers "typically view some combination of psychotherapy, HRT and gender reassignment surgery as 'medically necessary' services/procedures."

41. The State of Alaska utilizes a major insurance carrier, Aetna, to administer AlaskaCare. Aetna considers surgical treatment for gender dysphoria to be medically necessary.

42. The consulting firm also noted in its memorandum that the State of Alaska provides coverage in AlaskaCare for surgeries "such as reconstruction after a mastectomy or as a result of a severe birth defect" because they are "deemed medically necessary."

43. Although the consulting firm advised the State of Alaska in its memorandum that "[t]he determination of [what is] medically necessary should be made by the State based on consultation with medical experts," AlaskaCare categorically precludes coverage for transition-related surgical treatment, regardless of what medical experts agree constitutes medically necessary treatment for a particular transgender person.

44. The consulting firm estimated the cost of providing coverage for transition-related care, including surgical treatment, would represent a small fraction of the annual cost of

providing health care to AlaskaCare beneficiaries (e.g., potentially affecting costs by 0.01% in the active employee plan and by 0.007% in the retiree plan).

The State's Denial of Medically Necessary Care to Ms. Fletcher

45. Ms. Fletcher is currently employed as a legislative librarian for the State of Alaska. She began working for the State in 2012 as a project coordinator for a digitization project and was promoted to legislative librarian in 2014. Ms. Fletcher holds a master's degree in Library Science.

46. As part of the terms, conditions, privileges, and status of her employment with the State of Alaska, Ms. Fletcher is and, at all relevant times, has been enrolled in AlaskaCare.

47. Ms. Fletcher is a woman. She is also transgender.

48. While Ms. Fletcher was assigned the sex of male at birth, Ms. Fletcher's gender identity is female.

49. Ms. Fletcher ultimately came to terms with her female gender identity in adulthood after attempting to ignore and suppress it, which caused her to experience serious psychological harms including suicidal ideation. She realized that she needed to address the underlying cause of her psychological distress after she reached the point of loading a firearm and pointing it at herself in or around the fall of 2013.

50. Ms. Fletcher began to see a mental health professional in 2014 who diagnosed her with gender dysphoria.

51. In consultation with health care professionals, Ms. Fletcher transitioned to living openly as a woman in 2014, including through the medical steps described below.

52. As part of her transition, Ms. Fletcher began hormone therapy in 2014 as part of the medically necessary treatment for her gender dysphoria.

53. Ms. Fletcher also socially transitioned to living openly as a woman in 2014 by coming out as a woman who is transgender to her coworkers. She legally changed her name to Jennifer Rae Fletcher that same year and thereafter updated her name and, where appropriate, her gender marker on identity-related documents such as her driver's license and passport.

54. Surgical treatment was also medically necessary for treatment of Ms. Fletcher's gender dysphoria.

55. Ms. Fletcher submitted an inquiry in or around November 2016 to Aetna, the AlaskaCare administrator, regarding coverage for surgical treatment for gender dysphoria and pre-authorization for such treatment.

56. Aetna informed Ms. Fletcher in or around December 2016 that "AlaskaCare does not cover gender reassignment surgery" and directed her to the 2016 plan language containing the blanket exclusion of transition-related care. Aetna also indicated that "[a]lthough the current plan booklet is not the finalized document for 2017, this benefit information will remain the same for 2017."

57. Ms. Fletcher obtained medically necessary transition-related surgical treatment, specifically vaginoplasty and mammoplasty, in June 2017.

58. Prior to surgical treatment, Ms. Fletcher experienced significant distress related to her genitalia and chest that negatively impacted her daily life. For example, she particularly experienced such distress when using public restrooms or locker rooms designated for women and therefore avoided going to places where she might need to use these facilities. Ms. Fletcher also experienced such profound distress related to her genitalia that she attempted to engage in genital self-surgery in her adolescence, although she ultimately abandoned such attempts.

59. The medically necessary transition-related care that Ms. Fletcher has obtained—

including hormone therapy and surgical treatment—has been effective in treating distress associated with her gender dysphoria.

60. Because of the blanket exclusion of transition-related surgical treatment in AlaskaCare, however, Ms. Fletcher was forced to pay entirely for this surgical treatment out-of-pocket. This diverted financial resources that Ms. Fletcher would have been able to use to pay off her student loans and other debt.

61. But for the blanket exclusion of transition-related surgical treatment in the AlaskaCare plan, Ms. Fletcher would have obtained surgical treatment covered by the AlaskaCare plan.

62. The surgical procedures used to treat gender dysphoria, including those obtained by Ms. Fletcher, can be medically necessary for non-transgender people. The State provides coverage for these procedures where they are medically necessary for reasons other than gender transition.

63. The blanket exclusion of transition-related surgical care denies transgender individuals like Ms. Fletcher of their equal dignity by deeming their health care needs unnecessary. It also sends a deeply stigmatizing message that Ms. Fletcher's worth as an employee is lesser than others, since the exclusion deprives her of compensation that other employees receive. The exclusion is particularly humiliating and degrading because the State provides coverage for the same medically necessary health care for individuals who are not transgender.

64. The State of Alaska has consistently refused to fully remove its blanket exclusion of transition-related care, despite requests to do so, and even after its own consultant explained that transition-related care is medically necessary.

65. For example, the Chief Health Official for the State's Division of Retirement and Benefits wrote in an email in January 2017, on which Ms. Fletcher was copied, that the possibility of AlaskaCare providing coverage for transition-related care was "subjected to additional scrutiny" because such coverage entailed cost. As noted above, the State's own consultant had already provided an estimate in September 2016 that such coverage would potentially affect costs by 0.01% in the active employee plan and by 0.007% in the retiree plan. The Chief Health Official nonetheless stated that the State was "refraining" from providing such coverage.

66. Ms. Fletcher also wrote to the Chief Health Officer regarding the blanket exclusion and inquired whether the Division had fully considered the reasons in favor of removing the exclusion. The Director of the Division responded in February 2017 with a letter that stated, "Unfortunately, given the Division's many responsibilities and the number of people who are affected by its work, we simply lack the personnel and other resources to respond to the numerous comments and questions that you and other interested persons present."

67. On May 30, 2017, Ms. Fletcher timely filed a charge with the Equal Employment Opportunity Commission ("EEOC") against the State of Alaska for sex discrimination in violation of Title VII.

68. On March 13, 2018, the EEOC issued a determination finding reasonable cause to believe that the State had violated Title VII. Specifically, the EEOC found that the State's "categorical exclusion of gender reassignment treatment and services from its health plan results in the adverse treatment of [the State's] employees based on sex (including gender identity), in violation of Title VII."

69. Ms. Fletcher received a notice of right to sue dated May 17, 2018, and timely

initiated this suit.

CLAIM FOR RELIEF

Violation of Title VII (42 U.S.C. § 2000e, *et seq.*)

70. Plaintiff incorporates all prior paragraphs as though fully set forth herein.

71. Title VII provides that it is “an unlawful employment practice for an employer” to “discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . sex.” 42 U.S.C. § 2000e-2(a). It is also an unlawful employment practice for an employer to “limit, segregate, or classify his employees . . . in any way which would deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s . . . sex.” *Id.*

72. The State of Alaska is an “employer” within the meaning of Title VII with fifteen or more employees.

73. Ms. Fletcher is an “employee” of Defendant within the meaning of Title VII.

74. An employer-sponsored health plan is part of the “compensation, terms, conditions, or privileges of employment.” 42 U.S.C. § 2000e-2(a)(1).

75. The denial of medically necessary health care coverage also “adversely affects [one’s] status as an employee.” 42 U.S.C. § 2000e-2(a)(2).

76. Under Title VII, discrimination “because of . . . sex” includes discrimination on the basis of gender nonconformity, gender identity, transgender status, and gender transition.

77. By excluding coverage “related to changing sex or sexual characteristics” from AlaskaCare, the State of Alaska has drawn a classification that discriminates based on gender nonconformity, gender identity, transgender status, and gender transition.

78. The State of Alaska engaged in sex discrimination against Ms. Fletcher in

violation of Title VII by denying her coverage for medically necessary care based on a blanket exclusion that on its face discriminates based on sex.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendant on all claims, as follows:

A. Enter a declaratory judgment that Defendant violated Ms. Fletcher's rights under Title VII, and that AlaskaCare's blanket exclusion of transition-related surgical treatment on its face discriminates against transgender employees because of sex in violation of Title VII;

B. Award Ms. Fletcher compensatory and consequential damages against Defendant in an amount that would fully compensate Ms. Fletcher for the financial harm, emotional distress and suffering, embarrassment, humiliation, pain and anguish, violation of her dignity, and other damages that have been caused by Defendant's conduct in violation of Ms. Fletcher's rights under Title VII;

C. Award Ms. Fletcher her costs, expenses, and reasonable attorneys' fees pursuant to 42 U.S.C. § 2000e-5(k) and any other applicable laws;

D. Award Plaintiff pre-judgment and post-judgment interest; and

E. Grant other legal and equitable or injunctive relief as the Court deems appropriate, just, and proper.

F. The declaratory requested in this action is sought against Defendant and its officers, agents, servants, employees, and attorneys, as well as any other persons who are in active concert or participation with them.

* * *

Dated: June 5, 2018

Respectfully submitted,

s/ Eric Croft

Eric Croft (Alaska Bar No. 9406031)

THE CROFT LAW OFFICE

738 H Street

Anchorage, AK 99501

Telephone: 907-272-3508

Facsimile: 907-274-0146

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Counsel for Plaintiff Jennifer Fletcher